

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: October 13, 2017

Judgment delivered on: October 25, 2017

+ W.P.(C) 5571/2016 & CM. Nos. 23169/2016, 6998/2017 and
36913/2017

SUDHIR KUMAR TYAGI AND ORS

..... Petitioners

Through: Mr. R.K. Saini, Adv.

versus

SUPREME COURT OF INDIA AND ANR

..... Respondents

Through: Mr. Kirtiman Singh, (CGSC) Mr.
Waize Ali Noor, Adv. and
Mr. Prateek Dhanda, Adv.

AND

+ W.P.(C) 6346/2016 & CM No.17159/2017

SURUCHI RAWAT & ORS

..... Petitioners

Through: Mr. P.D. Gupta, Adv., Mr. R.K.
Seewal, Ms. Kiran Bairwa, Mr.
Rupesh Aggarwal and Mr. G.C.
Rawal, Advs.

versus

SUPREME COURT OF INDIA & ANR

..... Respondents

Through: Mr. Kirtiman Singh, (CGSC) Mr.
Waize Ali Noor, Adv. and
Mr. Prateek Dhanda, Adv.

J U D G M E N T

V. KAMESWAR RAO, J

1. As both these petitions involve identical issue(s) and facts, they are being decided by this common order.

2. The facts being identical, the same as averred in W.P.(C) No. 5571/2016, are being narrated hereunder.

W.P.(C) NO. 5571/2016

3. The prayers made in the writ petition are:-

“In the premises aforesaid, it is most humbly and respectfully prays that this Hon’ble Court may be pleased to issue:-

(a) A writ, order or direction in the nature of certiorari calling for the records of the case for perusal;

(b) A writ of Certiorari quashing the action on the part of the Respondents in firstly, not extending the validity period of the panel of 500 candidates prepared and declared by them in April 2014 for appointment to the posts of Junior Court Assistants, after having extended it twice for a period of six months each upto 31.3.2016 and secondly, instead, trying to fill up further posts becoming vacant/arising after 31.3.2016 by issuing a fresh advertisement to the great prejudice to the rights, interests and position of the petitioners, being illegal, arbitrary, malafide, discriminatory and in violation of the principles of equity, justice and good conscience, equitable/promissory estoppels and in infringement of the legal and fundamental rights of the petitioners;

(c) A writ of mandamus directing the respondents to continue/keep alive the panel of 500 candidates prepared and declared by them in April

2014 for the post of Junior Court Assistants till the same is exhausted and give appointment to the petitioners as per their merit position appearing in the same.”

4. The facts as noted from the Writ Petition being W.P.(C) No. 5571/2016 are, on October 31, 2012, the respondents issued an Employment Advertisement inviting applications for preparation of a panel for appointments to the post of Junior Court Assistant (‘JCA’ in short) in Pay Band-I of Rs.5200/-20200 plus Grade Pay of Rs.2800/-. It is the case of the petitioners that they being eligible in all respects had applied for the said post and after having undergone the Scheme of Examination/Selection Process, their names were shown in the panel of 500 selected candidates. At the end of the panel, a note was given to the effect that it will initially be valid for a period of one year with effect from March 31, 2014. It is averred that no maximum limit for the validity or further extension of the period was stipulated. Rather, it is their case that the respondents deliberately, purposefully and consciously left it open ended. It is averred that thereafter, the respondents extended the validity of the panel twice for six months each upto March 31, 2016 and at the time of either of the extensions it was not stated as to for how much further period, the panel can be extended or that it was the last extension of the panel, which clearly indicates/proves that there was no maximum time limit or maximum number of extensions for the panel and its validity shall be for an unlimited till it was exhausted.

5. It is the case of the petitioners that during the period of two years from March 31, 2014 to March 31, 2016, General Category candidates upto the rank of 424 and Reserved Category candidates upto rank of 475 were given appointment to the post of

JCA against the vacancies, which had arisen during that time. The last appointment was made during November, 2015. Thereafter, no candidate from the panel was called for the appointment nor the respondents had made any appointment there from even though the panel was extended uptill March 31, 2016 and many posts became vacant on the retirement of the old employees. It is their case that the respondents have been engaging Senior Assistants and Junior Court Assistants after their retirement and had appointed JCAs on contract basis. It is their case that as the respondents intended to issue a fresh advertisement, they approached the respondent No.2 personally and enquired as to why they were not being considered for appointment against the said posts like other candidates from the panel as was done for the last two years to which they were informed that the validity of the panel has not been further extended/cannot be extended as done in the past. The writ petition also refers to several representations made by the petitioners to the respondents on various dates starting from April 06, 2016. Even in the response given by the respondents on May 16, 2016, it was merely stated that the application containing representation of the applicants has been processed for direction, which gave a ray of hope in the minds of the petitioners. However, on June 01, 2016 the petitioners were orally informed that the representation has been rejected.

6. I may only note, in the Writ Petition being W.P.(C) No. 6346/2016, the prayers sought are as under:-

“It is, therefore, respectfully prayed that this Hon’ble Court may be gracious enough to issue appropriate writ/order/direction against arbitrary, illegal and discriminatory acts of the Respondents denying the Petitioners considerations/appointments to the post of Junior Court

Assistant with the Respondents on or before the expiry of the panel prepared by the Respondents after clearing various stages of the set prescribed recruitment procedure by the candidates, while vacancies for such posts were still existing before the expiry of the said panel i.e 31st March, 2016; seeking declaration that engagement of retired officers of the Respondents Supreme Court vide advertisement dated 31st Aug, 2015 and 20th Feb, 2016 is arbitrary and illegal; seeking directions for extension of the panel to accommodate the Petitioners who, after qualifying the requisite tests, are included in the panel; seeking directions to the respondents not to appoint any other candidate on the said vacancies without first offering appointment to the petitioners.

Any other order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice, may also be passed."

7. The respondents have filed their counter affidavits in both the writ petitions. The stand of the respondents is being culled out from the counter affidavit and the additional affidavit filed by the respondents in W.P.(C) No. 5571/2016. According to the respondents, in terms of Article 146 of the Constitution, which provides for the appointment of Officers and servants of the Supreme Court, the power is conferred on the Hon'ble Chief Justice of India in respect of appointment of Officers and servants on the establishment of the Supreme Court. Subject to certain conditions prescribed in Article 146, absolute power of recruitment, appointment and control of the staff of the Supreme Court is conferred on the Hon'ble Chief Justice of India. The approval of the President is necessary insofar as it relates to matters specified in proviso to Clause 2 because the budget has to be provided by the Central Government. It is their case that the unequivocal purpose and intention of the framers of the Constitution in enacting

Article 146 is that in matters of appointment of Officers and servants of the Supreme Court, Hon'ble Chief Justice of India is the Supreme Authority. In terms of Article 146 of the Constitution, read with Supreme Court Officers and Servants (Conditions of Service and Conduct) Rules, 1961 ('Rules of 1961' in short) all administrative powers have been conferred on the Hon'ble Chief Justice of India for determining the work structure of the Court, the Registry and also setting up the ministerial side of the Court. Rule 4 of the Rules of 1961 provides for method of recruitment of staff. Rule 5 provides for the qualification required for appointment of various categories of posts specified in Column 2 of the Schedule attached to the Rules. Rule 6 stipulates, the Hon'ble Chief Justice of India is the Appointing Authority in the Supreme Court. Rule 9 provides for conditions of service. Similarly, Rule 47 provides for residuary powers.

8. It is the case of the respondents that the Hon'ble Chief Justice of India exercising his powers under Article 146 of the Constitution and under the aforesaid Rules vide order dated October 19, 2012 approved the process for conducting open competitive examination and also simultaneous departmental test for formation of panel for appointment to the post of JCA. In terms of the said order, vide Advertisement dated October 31, 2012 applications were invited for preparation of a panel for appointment to the post of JCA. It is stated that the Advertisement dated December 31, 2012 issued was for preparation of a panel of suitable candidates and it did not specify the number of vacancies and therefore, the panel could not have been restricted to specific vacancies. Thereafter, in terms of the advertisement, test was conducted and ultimately vide order dated March 31, 2014 the Hon'ble Chief Justice of India approved formation of a panel

consisting of 500 candidates for appointment for filling up vacancies of JCA. In terms of the order dated March 31, 2014 of the Hon'ble Chief Justice of India, the aforesaid panel was valid for one year. It is also averred, as the vacancies of JCA were likely to become available due to promotion or resignation of the staff and the process of conducting the examination would take time, vide order dated March 27, 2015, the Hon'ble Chief Justice of India exercising his powers under Article 146 of the Constitution and the aforementioned Rules directed the extension of validity of panel by six months w.e.f March 31, 2015. Thereafter, again on the arising of vacancies due to promotion or resignation of the staffs and that the process of conducting the examination would take time, vide order dated September 17, 2015, the Hon'ble Chief Justice of India exercising his powers under Article 146 of the Constitution and the aforementioned Rules directed the extension of validity of panel by six months w.e.f October 01, 2015.

9. It is the stand of the respondents in their pleadings that no vacancy of JCA was left for being filled up by way of direct recruitment by the date of closure i.e March 31, 2016 and whatever vacancies available were meant to be filled by promotion of departmental candidates on the basis of departmental examination as per quota of vacancies fixed for departmental candidates. It is averred that the power of the Hon'ble Chief Justice of India under Article 146 of the Constitution and the Rules of 1961, the power implies to form a panel of suitable candidates on the basis of merit having regard to the institutional requirements. It is stated that the panel subsisted for a very limited period and it was not kept open indefinitely and once the panel/wait list lapses then the

left over candidates therein cannot claim appointment by virtue of their inclusion in the panel and fresh recruitment process has to be undertaken.

10. Mr. R.K. Saini (learned counsel appearing for the petitioner in W.P.(C) No. 5571/2016) and Mr. P.D. Gupta (learned counsel appearing for the petitioner in W.P.(C) No. 6346/2016) would submit that the impugned action of the respondents in not considering the left out candidates of panel particularly up to its validity i.e March 31, 2016 while the vacancies were still existing, is wholly arbitrary, discriminatory and against the principles of natural justice. They would state that the same is apparent from the fact that retired Officers are being appointed in their place, who have not gone through any selection process prescribed by the respondents and were not part of the panel. It is their submission that the petitioners had applied against fresh advertisement, which appeared on October 31, 2012 and the respondents have prepared the panel and extended it twice upto March 31, 2016 only because vacancies were existing. As per the Advertisement, the maximum age prescribed was 27 years. The process has consumed three and a half years, thus most of the left out candidates like the petitioners herein have now become over age for any Government Service and thus lost their right for employment forever, which they were legally entitled to, after qualifying the test and inclusion of their names in the panel for appointment to the post of JCA. In other words, it is their submission that if there are more vacancies then respondents could well further extend the validity of the panel. Unfortunately, instead of doing so and in order to circumvent appointment of left out candidates of the panel including the petitioners, the respondents have adopted a modus operandi not to offer appointment to

the left out candidates from the panel and to extend the validity of the panel and/or first not offering appointment to the left out candidates of the panel including the petitioner before accommodating the retired Officers.

11. During the course of his submission, Mr. R.K. Saini has placed before me a list of officials in the Supreme Court of India as on October 04, 2017 to contend that as of date there are 48 vacancies of JCA existing and the petitioners being 13 in all, can be appointed against the said vacancies. He would also draw my attention to a letter dated September 01, 2017 of Mr. Ajay Aggarwal, Additional Registrar/CPIO wherein it was stated the last selectee joined from General/OBC category was of rank No. 416, having joined on February 08, 2016. Mr. Saini and Mr. Gupta stated, the petitioners are entitled to the reliefs as prayed for in the writ petition.

12. On the other hand, Mr. Kirtiman Singh has placed before me photocopies of the relevant note sheets where decisions have been taken from time to time with regard to the selection in question. He has drawn my attention to the same to contend that the position that arises from the note sheets has been reflected in their pleadings filed before this Court. It is his endeavor to state that on March 31, 2014, the Hon'ble Chief Justice of India has decided to keep the panel valid initially for a period of one year from the date of approval of the proposal and the existing as well as the vacancies arising in future be filled there from. He would also state, that subsequent thereto, the panel was extended for a period of six months each with effect from March 31, 2015 and October 01, 2015 respectively. He also draws my attention to a note dated March 30, 2016 whereby it was decided that the validity of the panel may not be extended beyond

March 31, 2016. From the note, it is seen that on the relevant date there were 12 departmental candidates appointed through departmental examination, were working as JCAs. The rest of the vacancies were to be filled through departmental candidates and there was no vacancy to be filled through open recruitment. According to him, the panel was not extended for good and valid reason. No mandamus can be sought by the petitioners for extension of the same, more so when there are no vacancies available. In any case, it is also his submission that the panel having been extended for a period of six months each on two occasions, could not have been extended further merely because names of certain persons existed in the panel. According to him, mere existence of a name in the panel would not give any right to such a person, seek appointment. He seeks the dismissal of the writ petition.

13. Having heard the learned counsel for the parties, the only issue, which arises for consideration is whether a direction could be issued for extending the validity of a panel and appointing the petitioners for the vacancies existing as of date. There is no dispute, initially a panel of 500 persons, on merit was created, whose life was kept valid for a period of one year. The validity of the panel was further extended on two occasions for a period of six months each and the appointments were made to the post of JCA from the said panel. But it was noted that there were no posts in the grade of JCA to be filled through open selection. In other words, the vacancies so existing were to be filled under the quota meant for departmental candidates. In the absence of any vacancies, the decision not to extend the panel beyond March 31, 2016 is justified. It is not the case of the petitioners that there are vacancies available to be filled in the quota meant for open

selection. Once the validity of the panel has not been extended, any vacancies which have arisen after March 31, 2016 need to be filled through the process of fresh selection and it is pursuant thereto, that the fresh Advertisement has been issued by the respondents for making fresh selection on January 27, 2017 for preparing a fresh panel for filling up 57 vacancies anticipated, upto December 31, 2017 for the post of JCA.

14. Insofar as the plea of Mr. Saini that as of date 48 vacancies being available, the same need to be filled from the petitioners, is also without any merit when the validity of the panel has expired on March 31, 2016 and moreover a fresh Advertisement has been issued for filling up the existing and the future vacancies till December 31, 2017 and those persons who have applied against the Advertisement would have also a right for consideration. That right cannot be denied only on the asking of the petitioners that their names feature in the panel under the earlier Advertisement.

15. That apart, I agree with the submission made by Mr. Kirtiman Singh that merely the name of the petitioners feature in the panel, would not give a right to them, to seek an appointment. In this regard, I would like to refer to the judgment of the Supreme Court in the case of *State of Bihar v. Secretariat Assistant Successful Examinees Union AIR 1994 SC 736* wherein it was held, empanelment was at best a condition of eligibility for purposes of appointment and by itself did not amount to selection or create a vested right to be appointed unless relevant service rule said to be contrary. Further in the case of *Shankarsan Dash v. Union of India AIR 1991 SC 1612*, it was held it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an

indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any right to the post. That apart, no mandamus can be issued by this Court to the respondents to extend the validity of the panel merely because subsequent to March 31, 2016 vacancies have arisen. Such a decision is beyond the scope of judicial review and it is for the Competent Authority to decide such an issue keeping in view the requirement in the Organization. In ***Jatinder Kumar and Ors. vs. State of Punjab and Ors. (AIR 1984 SC 1850)***, the Supreme Court has held the process of selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. Moreover, the posts in question being public posts, the recruitment to the said posts need to be filled by giving wide publicity (Advertisement in this case) as held by the Supreme Court in the case of ***Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors (1996) 6 SCC 216***.

16. In view of my above discussion, I do not see any merit in these petitions. The same are dismissed.

CM. Nos. 23169/2016, 6998/2017 and 36913/2017 in W.P.(C) No. 5571/2016
CM No.17159/2017 in W.P.(C) 6346/2016

Dismissed as infructuous.

V. KAMESWAR RAO, J

OCTOBER 25, 2017/ak